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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Applicant	Darin Chase
Applied for Mark	HOMESITE MORTGAGE
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: **Darin Chase**

Trademark: **HOMESITE MORTGAGE**

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**APPLICANT'S APPEAL BRIEF IN SUPPORT OF
REGISTRATION OF
THE HOMESITE MORTGAGE MARK**

Commissioner for Trademarks
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I. INTRODUCTION

Applicant hereby submits this brief in support of registration of its application of the HOMESITE MORTGAGE mark.

Applicant applied for registration of the mark HOMESITE MORTGAGE in association with "mortgage lending services" in Class 36. The Examining Attorney refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), stating that the HOMESITE MORTGAGE mark, when applied to "mortgage lending services," is likely to cause confusion when compared to the following prior registrations: HOMESITE (Registration No. 2173292), HOMESITE (Registration No. 2406834), HOMESITE INDEMNITY (Registration No. 2513119), HOMESITE INSURANCE (Registration No. 2530278), HOMESITE HOME INSURANCE (Registration No. 2416450), HOMESITE (Design) (Registration No. 2456050), and HOMESITE RENTERS EXPRESS (Registration No. 2932580).

Applicant respectfully submits that the HOMESITE MORTGAGE mark does not resemble any of the marks shown in U.S. Registration Nos. 2932580; 2456050; 2416450; 2530278; 2513119; 2406834; and 2173292 as to be likely, when used on the identified good, to cause confusion, or to cause mistake, or to deceive. Accordingly, Applicant requests that the refusal be withdrawn and that the instant application for the HOMESITE MORTGAGE mark be approved for publication.

II. LIKELIHOOD OF CONFUSION REFUSAL

In determining whether confusion is likely to exist between two marks, the United States Patent and Trademark Office examines the marks in light of the factors set forth in

In re E.I., du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973); *see* TMEP § 1207.01. The relevant factors in this matter include: (1) the dissimilarity of the respective marks as to appearance, sound, connotation and commercial impression; (2) the nature of the goods cited in the application; and (3) the conditions under which sales of the respective products or services take place. *See du Pont*, 476 F.2d at 1362.

Applicant's mark is not likely to be confused with the above cited registrations because the HOMESITE MORTGAGE mark is distinguishable in appearance, sound, connotation and commercial impression and because the services associated with the respective marks are dissimilar. Further, there is no likelihood of confusion because the services associated with the HOMESITE MORTGAGE mark and the cited registrations are highly regulated and are purchased by extremely sophisticated customers who will necessarily exercise a great deal of care in determining the source of the services.

A. The Dissimilarity of the Respective Marks as to Appearance, Sound, Connotation and Commercial Impression

As noted, the HOMESITE MORTGAGE mark is distinguishable from the cited registered marks as to appearance, sound, connotation and commercial impression. A likelihood of confusion analysis cannot be predicated on dissection of a mark, but rather, marks must be compared in their entireties and must be considered in connection with the particular goods for which they are used. *See In re Nat'l Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); *see also* TMEP § 1207.01. Further, the marks must be considered as they are encountered in the marketplace. *Alpha Industries, Inc. v. Alpha Steel Tube & Shapes, Inc.*, 616 F.2d 440, 445, 205 USPQ 981 (9th Cir. 1980).

Here, the mark HOMESITE MORTGAGE is distinct from all of the cited

registrations. Reference is made to the Table below, which details the many differences between the cited registrations and the HOMESITE MORTGAGE mark.

TABLE

Cited Registration	Mark/Design	Class(es) and Recitation of Goods/Services	Differences with the HOMESITE MORTGAGE mark
2932580	HOMESITE RENTERS EXPRESS	36 <i>Insurance services</i> in the field of property, casualty, homeowners and renters insurance, <i>namely underwriting, claims administration, claims processing and risk management</i>	The HOMESITE MORTGAGE mark does not include the phrase “RENTERS EXPRESS” contained in the cited registration. Furthermore, the cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk management</i> as opposed to mortgage lending services.
2456050	HOMESITE and design	36 <i>Insurance services</i> in the field of property, casualty and homeowners insurance, <i>namely, underwriting, claims administration and claims processing and risk management services</i>	The HOMESITE MORTGAGE mark is a word mark and does not include any design elements, as opposed to the cited registration which includes a “smiling” detached house design over the term “MORTGAGE.” Additionally, the cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Furthermore, the cited

			registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk management services</i> as opposed to mortgage lending services.
2416450	HOMESITE HOME INSURANCE	36 <i>Insurance services</i> in the field of property, casualty and homeowners insurance, <i>namely, underwriting, claims administration and claims processing and risk management services</i>	The HOMESITE MORTGAGE mark does not include the phrase “HOME INSURANCE” contained in the cited registration. Furthermore, the cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk management services</i> as opposed to mortgage lending services.
2530278	HOMESITE INSURANCE	36 <i>Insurance services</i> in the field of property, casualty and homeowners insurance, <i>namely, underwriting, claims administration and claims processing and risk management services</i>	The HOMESITE MORTGAGE mark does not include the term “INSURANCE” contained in the cited registration. Furthermore, the cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk</i>

			<i>management services</i> as opposed to mortgage lending services.
2513119	HOMESITE INDEMNITY	36 <i>Insurance services</i> in the field of property, casualty and homeowners insurance, <i>namely, underwriting, claims administration and claims processing and risk management services</i>	The HOMESITE MORTGAGE mark does not include the term “INDEMNITY” contained in the cited registration. Furthermore, the cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk management services</i> as opposed to mortgage lending services.
2406834	HOMESITE	36 <i>Insurance services</i> in the field of property, casualty, and homeowners insurance, <i>namely, underwriting, claims administration, claims processing and risk management services</i>	The cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “insurance services” such as <i>underwriting, claims administration, claims processing and risk management services</i> as opposed to mortgage lending services.
2173292	HOMESITE	36 Real estate services, <i>namely, real estate listing, property management and agency services</i> 35	The cited registration does not include the term “MORTGAGE” contained in the HOMESITE MORTGAGE mark. Additionally, the cited registration includes a recitation of “real estate

		On-line database inquiry and posting services in the field of real estate, <i>namely, dissemination of advertising for others in the field of real estate via on-line wide area, global computer networks, providing on-line sites and home pages</i>	services” such as <i>real estate listing, property management and agency services</i> as opposed to mortgage lending services.
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The TTAB has previously endorsed the view that even slight variations in appearance are sufficient to render two marks dissimilar and not likely to cause confusion. Reversing the Examining Attorney’s decision that there was a likelihood of confusion between the marks “DOX” for computer programming services and “DOC’S” for “custom manufacture of computer systems,” the TTAB found the marks were “substantially different in appearance,” and therefore not likely to cause confusion. *In re Software Design*, 220 USPQ 662 (TTAB 1983). Likewise, in *In re Forrester Laboratories*, the TTAB found that the marks “RE-GEN” used in conjunction with “non-medicated skin care preparations” and “REGENERATION” used in conjunction with “skin moisturizing creams and lotions” were not likely to be confused. *In re Forrester Laboratories*, 1252 OG 25 (2001). In light of these TTAB decisions, certainly the mark HOMESITE MORTGAGE is “substantially different” in appearance, sound, connotation and commercial impression from all of the cited registered marks.

B. The Dissimilarity of the Services

Confusion as to the source of the HOMESITE MORTGAGE services is unlikely where the associated "mortgage lending services" are entirely dissimilar to the "insurance

services" and "real estate services" of the cited registrations. In comparing the services of the marks for the purpose of determining likelihood of confusion, the nature and scope of the services must be determined on the basis of the goods or services recited in the application or registration. TMEP §1207.01(a)(iii) (citing *Hewlett-Packard Co. v Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002)) (other citations omitted).

The HOMESITE MORTGAGE application lists "mortgage lending services" (as amended) as the associated services whereas the cited registrations list, among other things, "insurance services," "real estate services, namely, real estate listing, property management and agency services," and "on-line database inquiry and posting services in the field of real estate." The only possible similarity between HOMESITE MORTGAGE mark and the cited marks is the fact that the services are somewhat related to real estate. Such a broad relationship is insufficient to create a likelihood of confusion.

In *Astra Pharmaceutical Products, Inc. v. Beckman Instruments, Inc.* 718 F.2D 1201, 220 USPQ 786 (1ST Cir. 1983) the court considered the similarity of a drug used as a local anesthetic and a computerized blood analyzer. Even though the respective marks ("ASTRA") were *identical* and both were sold to hospitals, the court found no similarity of the goods. The Court stated:

The most favorable inference that may be drawn from the evidence regarding the similarity of goods is that both parties' products are used in the medical or health care field. However, such a broad inference is not sufficient to demonstrate that a genuine issue exists concerning likelihood of confusion as to the source of the products involved in the present suit.

Astra, 718 at 1207; see *Therma-scan, Inc. v. Thermoscan*, 295 F.3d 623, 63 USPQ2d 1659 (6th Cir. 2003) (where the court found no likelihood of confusion between

THERMA-SCAN for thermal-imaging examination services and THERMOSCAN for medical thermometers despite the high degree of similarity of the marks and the apparent relatedness of the goods).

Much like the hospital equipment at issue in *Astra*, the only common denominator in the present case is that "mortgage lending services" and "insurance services" for real estate, "real estate services, namely, real estate listing, property management and agency services," and "on-line database inquiry and posting services in the field of real estate," are related to the field of real estate. Yet, this is where the similarity ends. Listing services and property management services are very different from mortgage lending services, which requires that a provider have an extensive financial background and understanding. Mortgage lending is also very different from insurance services. Both services are independently regulated by the government, and providers of each service have to meet certain separate certification requirements. Additionally, buyers purchase insurance and mortgages for extremely different reasons. Whereas an individual or entity applies for and obtains a mortgage (after a lengthy process) as a means to acquire property, an individual or entity purchases insurance (after a very short process) for risk management purposes.

Moreover, the United States Patent and Trademark Office has previously approved registrations for marks that include the same root word, but offer different services, namely insurance, mortgage lending, and real estate services. Specifically, the United States Patent and Trademark Office has previously approved the following registrations:

CENTRAL MORTGAGE CORPORATION (Registration No. 1456824) for "banking services," where the words 'mortgage corporation'

were disclaimed.

C CENTRAL INSURANCE COMPANIES (Registration No. 1242321) for ‘underwriting of automobile, home, and business insurance,’ where the words ‘insurance companies’ were disclaimed.

CENTRAL PARKE (Registration No. 2752543) for ‘real estate development; residential and commercial building construction; construction services, namely planning, laying out and custom construction or residential and commercial communities.’

CENTRAL STATION (Registration No. 1627622) for ‘real estate development services.’

Like Applicant’s mark and the cited registered marks, these approved marks all include the same root word, yet are associated with different services, namely mortgage lending, real estate, or insurance services. Certainly, these approved registrations suggest that there is no likelihood of confusion between Applicant’s mark HOMESITE MORTGAGE and the cited marks that include the term “HOMESITE,” where Applicant’s mark is associated with “mortgage lending services,” and the other cited marks are associated with either “insurance” or “real estate” services.

C. The Conditions of Sale are Dissimilar

No confusion is likely between the HOMESITE MORTGAGE and the cited registrations because the services associated with each respective mark are typically expensive, risky, and complex. Also, the prospective customers are generally very sophisticated, and prospective customers will necessarily exercise a great deal of care in determining the source of the services.

In deciding whether two marks are likely to be confused, it is important to consider the conditions under which sales of the respective products or services take

place, i.e., whether the products or services are purchased by “impulse” or after “careful consideration.” *du Pont*, 476 F.2d at 1361. “There is always less likelihood of confusion where goods are expensive and purchased after careful consideration.” *Astra* at 1207 (citing *Pignons S.A. de Mecanique v. Polaroid Corp.*, 657 F.2d 482, 489 (1st Cir. 1981)).

The relevant cases not only authorize but also instruct the trial courts, in making a determination as to likelihood of confusion, to consider the level of sophistication of the relevant purchasers ***The greater the value of an article the more careful the typical consumer can be expected to be***; the average purchaser of an automobile will no doubt devote more attention to examining different products than will the average purchaser of a ball of twine. (Emphasis added).

3 J. McCarthy, Trademarks and Unfair Competition, § 23:96 (4th ed. 2004) (quoting *McGregor-Doniger, Inc., v. Drizzle, Inc.*, 599 F.2d 1126, 1137, 202 USPQ 81 (2nd Cir. 1979)).

In the instant case, Applicant provides mortgage-lending services whereas the registrants of the cited marks provide insurance services. Mortgages and insurance policies both involve sophisticated and often complex terms requiring considerable thought and evaluation by prospective purchasers. However, mortgages (even adjustable rate mortgages) are often purchased for a large number of years (e.g., 15 or 30-year mortgages), and for typically hundreds of thousands of dollars. Insurance policies, for whatever their purpose, typically are purchased or renewed on an annual basis, with premiums running in the hundreds and possibly the low thousands of dollars. Moreover, both the mortgage lending and insurance industries are highly regulated. No consumer, of even dubious sophistication, will be confused into patronizing a mortgage company when attempting to purchase insurance for his/her motorcycle or speedboat. Even purchasers of “real-estate” related insurance policies (e.g., renters or homeowners

insurance policies) will understand the difference between applying for a multi-hundred thousand dollar mortgage (which could take weeks and even months to close) and almost instantaneously applying for and purchasing a renters or homeowners insurance policy for a few hundred or even a couple of thousand dollars. No doubt, prospective customers will be acutely aware of the respective companies/sources that are providing these services, thereby eliminating any possibility of confusion.

The Examining Attorney based his refusal of the proposed mark on the similarity of mortgage lending services and homeowners, renters, and property insurance services, reasoning that because these services frequently emanate from the same source, customers would be likely to conclude that Applicant's mortgage lending services were associated with or sponsored by the Registrant. To the contrary, courts have specifically rejected the notion that mortgage lending services and insurance services are so similar as to cause confusion in the public mind. *See Allstate Ins. Co. v. Allstate Investment Corp.*, 210 F.Supp. 25, 30 (W.D. La. 1962), *aff'd Allstate Ins. Co. v. Allstate Investment Corp.*, 328 F.2d 608 (5th Cir. 1964)

In *Allstate Insurance Company v. Allstate Investment Corporation*, the court found that plaintiff's insurance business and defendant's mortgage banking business were sufficiently dissimilar and not likely to cause confusion in the public mind. The court stated:

Plaintiff is in the insurance business; defendant is in the mortgage banking business. This major difference in the character of services rendered by each makes it all the less likely that there has been, or will be confusion in the public mind.

Id. at 30. This dissimilarity in the nature of insurance services and mortgage banking

services was later affirmed by the Fifth Circuit. *See Allstate Ins. Co.*, 328 F.2d 608.

Furthermore, to take the Examining Attorney's reasoning to the extreme, any marks pertaining to services such as home inspection, plumbing services, heating and ventilation services, termite eradication services, asbestos remediation services, or even lawn mowing services could all ***ultimately*** "emanate from the same source" (e.g., through a referral from a real estate agent or a homeowners insurance representative). The field of "real estate," which forms no part of the recitation of the HOMESITE MORTGAGE mark, is too broad to provide a basis for refusal of the instant mark.

Moreover, there is unlikely to be confusion where there is no overlap in the services advertised by both Registrant and Applicant. *See Allstate Ins. Co.*, 210 F.Supp. at 30-31. Typically, mortgage services are advertised in separate sections of advertising directories from insurance services regardless of the medium (e.g., Yellow Book).

III. CONCLUSION

For the reasons set forth above, Applicant submits that there is no likelihood of confusion between Applicant's mark and the prior cited registrations. The HOMESITE MORTGAGE mark is distinguishable in appearance, sound, connotation and commercial impression. Further, "mortgage lending services" and "insurance" and "real estate" services are entirely different. Lastly, the highly regulated nature of the insurance, real estate, and mortgage lending industries and the sophistication level of the purchasers of insurance, real estate, and mortgage lending services precludes a finding of a likelihood of confusion. Additionally, Applicant's disclaimer of the term "MORTGAGE" from its mark further supports a finding that the marks are not likely to be confused.

Accordingly, Applicant respectfully requests that the refusal of registration be withdrawn and prays that the application for the HOMESITE MORTGAGE mark be approved for publication.

Respectfully submitted,

Dated: July 10, 2007

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